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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,753	02/16/2006	Hiromi Nambu	271767US0PCT	1649
22850 7590 02/02/2009 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER MERCIER, MELISSA S				
ART UNIT 1615		PAPER NUMBER		
NOTIFICATION DATE 02/02/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/534,753

**Applicant(s)**

NAMBU ET AL.

**Examiner**

MELISSA S. MERCIER

**Art Unit**

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 11, 17, 22-28, 30-41, 43 and 45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 11, 17, 22-28, 30-41, 43 and 45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 10-16-08
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### **Summary**

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claims 1, 11, 17, 22-28, 30-41, 43, and 45 remain pending in this application.

Receipt and acceptance of the Terminal Disclaimer filed on December 4<sup>th</sup>, 2008 is acknowledged.

### ***Information Disclosure Statement***

Receipt of the Information Disclosure Statement filed on October 16, 2008 is acknowledged. A signed copy is attached to this office action.

### **Withdrawn Rejections**

#### ***Claim Rejections - 35 USC § 103***

The rejection of Claims 1, 11, 17, 22-28, and 30-41 rejected under 35 U.S.C. 103(a) as being unpatentable over Masashi et al. (AU-B-25757/95) in view of Shin (US Patent 4,937,069) has been withdrawn. The incorporation of the limitations of claims 42 and 44 into the independent claims is not obvious over the cited references. Masashi teaches away from the particle size of the surface hydrophobated water absorbing polymer particles being less than 10 $\mu$ m.

The rejection of Claims 1, 11, 17, 22-28, and 30-45 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over

claims 8, 10, 12, 15, and 24 of copending Application No. 10/137,405 in view of Shin (US Patent 4,937,069) has been overcome with the filing of the terminal disclaimer on December 4, 2008.

### **Newly Applied Rejections**

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 11, 17, 22-27, 34-41, 43, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Otsuka (JP05070322, translation provided).

Otsuka discloses a water in oil emulsion cosmetic characterized by comprising 0.1-10% by weight of a water absorbing polymer and 1-20% by weight of a dimethylpolysiloxane (abstract).

The water absorbing polymer can include carrageenan, gelatin, agar, tragacanth gum, viscose, methylcellulose, ethylcellulose, hydroxyethylcellulose, carboxymethylcellulose, polyvinyl alcohol or the like by adding a polyvalent metal salt (paragraph 0009). Other examples include methacrylic acid, acrylic acid, a salt of ammonium, acrylamide, and VPV, for example (paragraphs 0010-0012).

The hydrophobized powder is obtained by subjecting one or more types of powder to a hydrophobization treatment. Agents are preferably silicone oils, such as dimethylpolysiloxane, methyphenylpolysiloxane, methyhydrogenpolysiloxane, and the

like (paragraph 0022). Cyclic polysiloxane can also be used (paragraph 0033). The oil agent may be present in the amount of 0.1-20% by weight (paragraph 0024).

The average particle size is 0.05-50um (paragraph 0023).

Water can be present in an arbitrary amount, in order to provide a good usability, less oily feeling or sticky feeling, and to improve spread ability. It is usually present in the amount of 10% or more (paragraph 0025).

In the emulsion, an antiperspirant substance can be blended within the range that does not impair the effect of the composition. Any substance can be used as long as it is a substance conventionally considered to have an antiperspirant action, for example an astringent salt aluminum or zirconium. The antiperspirant is present in the amount of 1-50% by weight (paragraph 0026).

Otsuka does not expressly disclose a preparation of a cosmetic composition comprising the particles and an antiperspirant component; however, it is clearly suggested to do so. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated an antiperspirant into the composition as suggested by Otsuka in order to reduce the uncomfortable feeling such as stickiness or clamminess caused by sweating (paragraph 0002).

It is noted that Otsuka and the instant Application share the same assignee. Applicant is reminded of their Duty to disclose relevant documents. Applicant has submitted 4 separate Information Disclosure Statements during prosecution of this application and did not disclose this particular reference.

Claims 28 and 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Otsuka (JP05070322, translation provided) in view of Masashi et al. (AU-B-25757/95).

The teachings of Otsuka is discussed above and applied in the same manner. Otsuka does not disclose amino-modified silicone.

Masashi discloses improved water absorbent resin particles treated with an organic polysiloxane. Preferable organic polysiloxane compounds include amino-modified silicone oil such as the amino-modified silicone oil (see page 11 chemical structures).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the amino modified silicone oil of Masashi since it is disclosed they have a reactivity which is more preferable with respect to unsuspectibility of detaching from the surface of the resin particles at moisture absorption and expectancy (page 12).

### ***Conclusion***

**Due to the new grounds of rejection presented in this office action, this action is made Non-Final.** Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA S. MERCIER whose telephone number is (571)272-9039. The examiner can normally be reached on 8:00am-4:30pm Mon through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melissa S Mercier/  
Examiner, Art Unit 1615

/MP WOODWARD/  
Supervisory Patent Examiner, Art Unit 1615